

**Cour
Pénale
Internationale**
**International
Criminal
Court**

No.: ICC-02/04-01/05

Date: 26 September
2005

Original: English

PRE-TRIAL CHAMBER II

Before: Judge Tuiloma Neroni Slade, Presiding Judge
Judge Fatoumata Dembele Diarra
Judge Mauro Politi

Registrar: Mr Bruno Cathala

SITUATION IN UGANDA

Under seal
Ex Parte, Prosecutor Only

**Urgent Application for Authorization to Disclose Information Relating to The
Warrants of Arrest, To Request the Registry to Transmit Requests for Arrest and
Surrender, And To Modify Requested Date of Unsealing**

The Office of the Prosecutor	
Mr. Luis Moreno Ocampo, Prosecutor Mrs. Fatou Bensouda, Deputy Prosecutor Ms. Christine Chung, Senior Trial Lawyer	

No.: ICC-02/04-01/05

26 September 2005

As a result of information which has become known to the OTP in the last several days, the Prosecutor respectfully requests, on an urgent basis: (1) authorization to notify representatives of States and international bodies of the existence of the warrants of arrest previously issued by this Chamber on 8 July 2005, and the contents of those warrants, if the Prosecutor deems such disclosure necessary to prevent an opportunity for securing possible arrest of an accused from being lost; and (2) authorization to request the Registry to transmit the requests for arrest and surrender, under seal, to any combination of the following Governments: the Governments of Uganda, the Democratic Republic of Congo ("DRC"), and the Sudan. Because of the urgency of the need for the authority requested, the Prosecutor respectfully requests a disposition of this urgent application by 10:30 a.m. on Tuesday, 27 September 2005. In addition, with respect to the pending Application for the Unsealing of Warrants of Arrest Issued on 8 July 2005, and Other Related Relief (hereinafter "Unsealing Application"), the OTP modifies its request to have the warrants of arrest unsealed, to the extent that it respectfully requests that unsealing be ordered to take place on Wednesday, 5 October 2005, instead of Wednesday, 28 September 2005, because of events now occurring in the DRC and an opportunity to effect the arrest of Vincent OTTI.

Request for Sealing of This Submission

1. Because this submission is related to the currently sealed warrants of arrest, and to contacts which may be made to effect arrest, the OTP requests that this submission be received under seal, and *ex parte*, and that only the existence and title of this submission be unsealed, even after the unsealing of any warrants of arrest.

**Request for Authority to Disclose Information Relating To Warrants of Arrest,
To Request Registry to Transmit Requests for Arrest and Surrender, and To
Defer Unsealing**

2. This past Thursday, the Prosecutor filed the "Provision of Additional Information Relating to the Prosecutor's Application for Unsealing of Warrants of Arrest Issued on 8 July 2005, and Other Related Relief." By that submission, the Prosecutor submitted additional information in support of the Unsealing Application, which was dated 9 September 2005, and renewed its request that the Chamber order the warrants of arrest to be unsealed on 28 September 2005.
3. In Thursday's submission, the OTP notified the Chamber of the unprecedented movement of certain leaders and members of the LRA, including alleged second-in-command Vincent OTTI, into the DRC from the Sudan. Earlier in the week, the Ugandan media described the LRA rebels as having been "flushed out" of the Sudan into the DRC. The media also quoted President Yoweri Museveni as having stated the following about the LRA group in the DRC: "They should be extradited to Uganda or be handed over to the International Criminal Court." On Friday, the BBC reported that the LRA forces in the DRC are seeking asylum in the DRC.¹
4. This past weekend, the OTP confirmed that the LRA forces in the DRC have not merely arrived in the DRC but have already begun meeting with representatives of the DRC military. The meetings are expected to continue this week. The OTP continues its engagement with relevant states and

¹ Annexed as Exhibit A are copies of the text of the BBC article as well as articles published earlier in the week in Uganda about the LRA forces in the DRC.

international organizations on the issue of the potential arrest and surrender of OTTI and the other individuals named in the currently sealed arrest warrants.

5. Because of the recent developments, it becomes critical for the OTP to be able to inform relevant authorities in the Government of the DRC, the United Nations, and potentially other States and international bodies in a position to affect arrest efforts, of the existence of warrants of arrest and potentially the contents of those warrants. If the meetings now taking place in the DRC proceed without relevant representatives of the DRC, the UN, and the Government of Uganda having knowledge that the ICC has already issued warrants of arrest for the top leadership of the LRA, including Vincent OTTI: (1) a potentially unique prospect for arresting OTTI could be impaired; (2) a potentially unique prospect for improving security in Northern Uganda and elsewhere could be lost; and (3) discussions with the LRA in the DRC, which are highly likely to include discussions of the ICC, will be conducted on the basis of the mistaken factual premise that no warrants of arrest have been issued by the ICC; and (4) those who are engaging in discussions with the LRA in the DRC could be endangered. Any of these eventualities could obviously result in irreparable harm.
6. For the same reasons, the OTP respectfully requests, again on an urgent basis, immediate authority to request that the Registry transmit the requests for arrest and surrender to any combination of the following Governments: the Governments of Uganda, the DRC, and the Sudan. The OTP intends that Registry transmit the requests, at a minimum to the Governments of Uganda and the DRC, as soon as authorization is received from the Chamber, to avoid

losing an opportunity to secure the arrest of Vincent OTTI or others named in the warrants of arrest. Article 89(1) authorizes the court to transmit a request for arrest and surrender "to *any State* on the territory of which [a person named in the warrant of arrest] may be found." The five persons named in the warrants of arrest now are present in Uganda, the Sudan, and the DRC and have demonstrated the ability to move among these States. It therefore is appropriate for each of the three Governments named herein to receive transmissions of the requests for arrest and surrender.

7. In any case in which the OTP deems it necessary to convey information to a State or organization about the warrants of arrest, the OTP will do so on the basis that the information remain confidential and that the information be made available by the receiving State or organization only to persons or entities who have a need to know the information to perform their duties.
8. Upon any transmission of the requests for arrest and surrender, the confidentiality restrictions already contained in the requests will apply to any of the "Requested States."
9. The safety and well-being of victims, potential witnesses, and their families will not be adversely affected by the contemplated disclosures or transmissions. As has been described in the OTP's prior submissions, the OTP and the VWU will have completed implementing, by this Wednesday, the protective measures deemed necessary and appropriate, even assuming unsealing of the warrants and therefore public knowledge of their existence and content.

10. Finally, although the OTP requested on 9 September 2005 that unsealing of the warrants of arrest occur on 28 September 2005, and renewed this request for unsealing last Thursday, the changed circumstances in the DRC lead the OTP to modify the requested date of unsealing. If a public announcement from this Court were to interrupt the meetings and discussions currently underway in the DRC with the LRA forces led by OTTI, a potential opportunity to apprehend Vincent OTTI could be lost. To preserve the opportunity for arrest, it is preferable, in the OTP's assessment, first to inform relevant States and organizations of the existence of the warrants as proposed in this application and to continue to monitor the progress of the meetings in the DRC. For this reason, the OTP modifies its request for unsealing, to propose that unsealing be deferred until next week, on 5 October 2005.

11. If the Chamber determines that it is appropriate to grant this application, the OTP respectfully requests that the determination be implemented in the following manner:

- That the Chamber issue one new set of requests for arrest and surrender in which the only change in the text is to replace the words "Republic of Uganda" with the phrase "the State receiving this Request." This new set of requests can be transmitted by the Registry, if and when needed, equally to the Government of Uganda, the Government of the Democratic Republic of Congo and/or the Government of the Sudan and, in that form, will be fully executable by each.²

² As a non-State Party, the Government of Sudan will not have the same statutory obligation to comply, *see* Art. 87(5) and Art. 89(1), but each request and provision in the requests for arrest and surrender remains necessary and appropriate in any event.

- That in the case of the request for arrest and surrender pertaining to Joseph KONY, the new request contain the amendment requested in paragraph 16 of the Unsealing Application, or at a minimum, that the Chamber simply redact the phrase "Gulu Town."³
- That in the case of the warrants of arrest identified in paragraphs 14 and 15 of the Unsealing Application, the Chamber issue: (1) warrants of arrest redacted and amended in the manner requested in paragraphs 14 and 15 of the Unsealing Application; or (2) warrants of arrest from which the information identified in paragraphs 14 and 15 of the Unsealing Application has been simply redacted.⁴

CONCLUSION

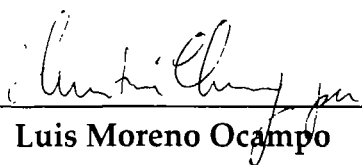
For the foregoing reasons, the Prosecutor respectfully requests that the OTP be granted, on or before 10:30 a.m. on Tuesday, 27 September 2005: (1) authorization to notify representatives of States and international bodies of the existence of the warrants of arrest previously issued by this Chamber on 8 July 2005, and the contents of those warrants, if the Prosecutor deems such notification to be appropriate to prevent an opportunity for securing possible arrest from being lost; and (2) authorization to request that the Registry transmit the requests for arrest and surrender to any combination of the following States:

The OTP notes that the practice at the ICTY, as is demonstrated by warrants of arrest previously furnished to the Chamber, is similarly for the warrants themselves *not* to pre-specify the receiving State or organization. This practice enables the issuing Chamber to avoid having to re-issue the requests and/or warrants each time the request is transmitted to a new State.

³ In the alternative, the Chamber could authorize the OTP to prepare a document conforming to redactions and/or amendments approved by the Chamber, prior to transmittal of any request.

⁴ In the alternative, the Chamber could authorize the OTP to prepare documents conforming to redactions and/or amendments approved by the Chamber, prior to transmittal of any request.

the Government of Uganda, the Government of the DRC, and the Government of Sudan. The OTP also respectfully modifies its request for unsealing, insofar as it requests that unsealing be ordered to take place on Wednesday, 5 October 2005, instead of Wednesday, 28 September 2005.


Luis Moreno Ocampo
Prosecutor

Dated this 26th day of September, 2005

At The Hague, The Netherlands